

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison
Company (U 338-E) for Authority to Lease
Available Land on the Barre-Villa Park
Transmission Right of Way to Katella Operating
Properties II, LLC.

Application 02-09-020
(Filed September 17, 2002)

**OPINION GRANTING APPROVAL UNDER
PUBLIC UTILITIES CODE SECTION 851 FOR A
LEASE OF UTILITY PROPERTY**

We grant the Application of Southern California Edison Company (SCE) for authority to lease available land under Public Utilities Code Section 851.¹ The SCE property consists of a 9.1-acre site located on a portion of SCE's Barre-Villa Park transmission right of way (ROW) in the City of Anaheim (Site). The Site is part of the Barre-Villa Park 220 kilovolt (kV) system. The lease is sought to permit Katella Operating Properties II, LLC (KOP II or Lessee) to construct and operate a recreational vehicle, and vehicle and industrial storage facility on the Site or sublease the Site to the City of Anaheim for parking lot uses.

Background

The Site is subject to an Option to License Agreement (Option Agreement) between SCE and Katella Operating Properties, LLC (KOP) dated March 5, 1999. On November 8, 2000, with SCE's consent, KOP assigned the Option Agreement

¹ All statutory references are to the Public Utilities Code unless noted otherwise.

to KOP II. On May 1, 2001, KOP II exercised the option to license the Site. On March 26, 2002, SCE and KOP II entered into a First Amendment to the Option Agreement (Amendment). No construction activities have occurred on the Site under the license.

SCE and KOP II desire to convert the license into a lease. If we authorize the lease, KOP II will either operate a vehicle and industrial storage facility on the Site or sublease it to the City of Anaheim for use as a parking lot. The City has reserved developments rights on the Site by sublicensing it from KOP II.

Terms of the Proposed Lease

Pursuant to the Option Agreement, KOP II has the right, subject to Commission approval, to license the Site from SCE for the described uses for a period of 40 years. The proposed lease will retain the same rent structure set forth in the existing license. Annual rent ranges from \$13,750 in Year 1 to \$127,500 in Years 16 through 20. At the end of lease years 20 and 30, rent for the ensuing 10-year period will be adjusted to fair market value, subject to a 3% annual cap.

The Option Agreement provides that KOP II's activities must not interfere with the operation of the electric facilities that cross the Site, use any portion of the Site directly beneath SCE's towers, or store hazardous substances, explosives or flammable materials on the Site. Further, KOP II must maintain a minimum clearance of seventeen (17) feet from all overhead electrical conductors and minimum radii of fifty (50) feet around all tower legs and ten (10) feet around all poles and anchors. KOP II must also provide access roads to the Site that are at least sixteen (16) feet wide and capable of supporting a gross load of forty (40) tons on a three-axle vehicle.

SCE retains various rights under the Option Agreement including the rights to:

- Approve KOP II's construction plans and specifications,
- Enter the Site at any and all reasonable times to inspect the property,
- Impose temporary restrictions on KOP II's right to enter, occupy and use the Site in order to perform necessary work on the electrical facilities located on the Site,
- Take back all or part of the leasehold by eminent domain or inverse condemnation and
- License portions of the Site for construction and maintenance of billboards and cell sites.

KOP II is also required to:

- Pay all personal property taxes, general or special assessments, or other fees levied against the Site or the improvements to be constructed thereon,
- Obtain all permits and approvals for construction and any zoning changes or use permits required for operation of its business on the Site,
- Maintain appropriate comprehensive general liability, auto liability and worker's compensation insurance and
- Indemnify SCE against all liability for damages or injury to persons on the Site, including damage or injury resulting from induced voltage, except to the extent caused by SCE's negligent or willful misconduct.

Determination of Best Secondary Use

The primary use of facilities located on the Site is the transmission and distribution of electricity in Orange County. SCE's above-ground electric lines crossing the Site, and their associated restrictions and height clearances limit the potential secondary uses. SCE states that its objective has been to select secondary uses for its property that provide the highest revenue consistent with its utility safety and reliability obligations, and that it has determined that the KOPS II project offers the highest potential revenue. To evaluate the rental potential of the Site, SCE analyzed the rent paid for comparable parking and storage facilities in Orange County as a function of the effective gross income of the facilities. SCE believes that the rent it will receive falls within the acceptable market range and is in line with revenues it receives in numerous other similar Commission-approved transactions.

Developer Selection

SCE states that it selected KOP II as the developer of the project because of the proposed use of the Site and the background and financial position of the principals of the developer group. KOP II is a California limited liability company engaged in the development and management of vehicle parking and storage facilities. Its principals have 65 years of combined experience in real estate development, finance and management. Their individual experience includes management of large financial enterprises, commercial real estate brokerage and real estate law.

Environmental Review

Because CEQA applies to discretionary projects to be carried out or approved by public agencies and because the Commission must act on the Section 851 application and issue a discretionary decision without which the

project cannot proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA guidelines Section 15051(b)).

In this case, the City of Anaheim (City) is the Lead Agency. The Commission is a Responsible Agency for this proposed project. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's environmental documents and findings before acting upon or approving the project. (CEQA Guidelines 15050(b)). The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guidelines Section 15096.

The Site is part of a commercial/industrial redevelopment project for which a Final Environmental Impact Report (EIR) was adopted by the City of Anaheim in 1993. In a letter dated February 5, 2002, the City's Redevelopment Agency advised KOP II that its staff had concluded that the 1993 EIR adequately addresses CEQA requirements for the proposed project on the Site. In the 1993 EIR, utilities were found to have no significant impact on the environment in the development area and no mitigation measures were required. We conclude that no further environmental review by the Commission is required, and that it can be seen with certainty that the lease and its associated development will have no significant effect on the environment.

Revenue Treatment

All revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's operating revenues. The sharing

mechanism applies to OOR, except for revenues that (1) derive from tariffs, fee or charges established by the Commission or by the Federal Energy Regulatory Commission; (2) are subject to other established ratemaking procedures or mechanisms; or (3) are subject to the Demand-Side Management Balancing Account.

Under the sharing mechanism, applicable gross revenues recorded from non-tariffed products and services like the proposed lease are to be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffed products and services deemed “passive” by the Commission, the revenues in excess of the annual threshold are split between shareholders and ratepayers on a 70/30 basis. The lease proposed here is “passive” for sharing purposes.²

Discussion

As a lease of utility-owned real property, the proposed transaction falls squarely within the requirements of Section 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public. . The task of the Commission in a Section 851 proceeding is to review the transaction, “[T]o ensure that it will not impair the utility’s ability to provide service to the public.” (D.96-04-045.) We have reviewed the Option Agreement and the proposed lease, and find that they

² See Attachment B to SCE’s Advice Letter 1286-E, which identifies the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Facilities and Substations* as categories of non-tariffed products and services. Advice Letter 1286-E was filed on January 30, 1998, pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088.

do not impair SCE's ability to provide utility service to the public. Because the proposed lease will generate revenues from the secondary use of Site and ratepayers will share in those revenues, the Application should be approved.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Michael Peevey is the Assigned Commissioner and Karl Bemesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In order for KOP II to construct its facilities on the Site, a lease from SCE is required.
2. Lease of the Site to KOP II is consistent with the current uses of the related SCE properties.
3. The lease and associated construction will not impair SCE's ability to provide service to the public.
4. The Site was included in a Final Environmental Impact Report adopted by the City of Anaheim in 1993.
5. The 1993 EIR adequately addressed CEQA requirements for the project on the Site and imposed no mitigation measures on SCE.
6. It can be seen with certainty that construction and operation of the facilities contemplated by the lease as proposed in the Application will have no significant effect on the environment.

7. All revenue from the lease in excess of a Commission-established threshold will be treated as Other Operating Revenue and shared 70/30 between SCE and its ratepayers, pursuant to D.99-09-070.

8. There is no known opposition to granting the authorization requested.

Conclusions of Law

1. Approving the requested lease is in the public interest.
2. The Final Environmental Impact Report adopted by the City of Anaheim in 1993 is adequate for the Commission's decision-making purposes as a Responsible Agency under CEQA.
3. No additional CEQA review by the Commission is required.
4. The proposed revenue sharing conforms to the Commission's order in D.99-09-070.
5. A public hearing is not necessary.
6. The Application should be granted as set forth in the following order.
7. This decision should be effective today in order to allow KOP II to expeditiously enter into the lease with SCE and begin paying rent for the benefit of SCE and its ratepayers as soon as possible.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's (SCE) Application for authority to lease a portion of its Barre-Villa Park transmission Right of Way to KOP II, Inc. is granted, as described above.
2. All revenue from the lease shall be treated as Other Operating Revenue subject to the sharing mechanism set forth in Decision 99-09-070.

3. SCE shall notify the Director of the Commission's Energy Division in writing of any amendment, extension or termination of the lease agreement, within 30 days after such amendment, extension or termination is executed.

4. Application 02-09-020 is closed.

This order is effective today.

Dated _____, at San Francisco, California.